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October 31, 2022

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-FINRA-2022-019 – Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision)

Dear Ms. Countryman:

The Financial Industry Regulatory Authority ("FINRA") submits this letter in response to comments received by the Securities and Exchange Commission ("SEC" or "Commission") regarding the above-referenced rule filing (the "Proposal") to amend Rule 3110 to add new Supplementary Material .19 (Residential Supervisory Location) ("RSL"). The Proposal would align FINRA's definition of an office of supervisory jurisdiction ("OSJ") and the classification of a location that supervises activities at non-branch locations with the existing residential exclusions set forth in the branch office definition to treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location, subject to specified safeguards and limitations.

The Commission published the Proposal for public comment in the Federal Register on August 2, 2022.[1] The Commission received 26 comment letters in response to the Proposal.[2] Twenty-four comment letters express strong support for the overall intent of the Proposal, noting general appreciation for the SEC's and FINRA's responsiveness during the COVID-19 pandemic. SIFMA states that the SEC and FINRA "have been outstanding partners in coordinating with the industry and responding to the various challenges presented by COVID-19." Many commenters further express strong support for FINRA's

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1 See Securities Exchange Act Release No. 95379 (July 27, 2022), 87 FR 47248 (August 2, 2022) (Notice of Filing of File No. SR-FINRA-2022-019).

2 See Attachment A for the list of commenters.

willingness to evolve its longstanding branch office definition based on lessons learned during the COVID-19 pandemic and evolving technology and workforce arrangements. Schwab states that the Proposal "would provide such a solution by modernizing the Supervision rule through aligning FINRA's definition of an [OSJ], and the classification of a location that supervises activities at non-branch locations, with the existing residential exclusions set forth in the branch office definition to treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location, subject to safeguards and limitations."

Virtu also commends FINRA's efforts to modernize Rule 3110, but conveys that the Proposal does not go far enough. Many commenters also note the positive impact the Proposal will have on workplace flexibility, and hiring efforts that enhance talent recruitment and retention in the financial industry, particularly with respect to diversity and inclusion initiatives.[3]

Two commenters—NASAA and PIABA—are critical of the Proposal and oppose it on the basis that the Proposal will adversely impact investor protection. NASAA believes FINRA has not explained adequately why the frequency of inspections of supervisory offices should be reduced.

FINRA is not proposing to amend the Proposal in response to the comments. The following are FINRA's responses to the material issues raised by commenters.[4]

Supervision of Associated Persons in Dispersed (Remote) Offices and Locations, Hybrid Work Environment – Reliance on Technology

Although the concept of the hybrid (or flexible) work model is not new, the COVID-19 pandemic compelled many employers across the U.S. to shift to the model broadly. In general, commenters indicate that the ability to work in a hybrid manner has

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3 See Cetera, CFN, HIC, LPL, MMLIS, Raymond James, Schwab, Smith.

4 FINRA notes that the comment letters from ASA, Group of 16, LPL (supplemental comment letter), NASAA and SIFMA (supplemental comment letter) for this Proposal are the same as the comment letters they each submitted in response to FINRA's proposed rule change relating to a proposed pilot program for remote inspections. See Securities Exchange Act Release No. 95452 (August 9, 2022), 87 FR 50144 (August 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-021) ("Pilot Proposal"), https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021.htm.

become an important tool for firms to retain qualified individuals in the financial services industry and recruit diverse talent from broad areas of the country.[5]

Many commenters convey the general view that advances in technology have facilitated remote supervision, with some commenters describing the technology that is used to effectively supervise their employees irrespective of their location.[6] Examples include the use of information barriers to safeguard and restrict the flow of confidential and material, non-public information; technology barriers to restrict and control employee access to systems and databases; internal email blocks; internet and social media reviews for evidence of outside business activities or private securities transactions; programs or operating systems to enable firms to conduct computer desktop reviews from another location; web-based communication platforms to communicate with registered persons; video conferencing technology; a centralized repository to retain electronic communications; software (e.g., DocuSign) to enable customers to digitally sign contracts and other documents such as client attestations and new account documents.[7]

The Proposal recognizes the continued evolution of the workforce model, along with ongoing advances in technology, while adopting appropriate safeguards and limitations that would continue to require member firms to supervise all of their associated persons, regardless of their location, compensation or employment arrangement, or registration status, in accordance with FINRA By-Laws and rules.[8] NASAA and PIABA, however, fundamentally question the ability of firms to supervise their associated persons who work from remote offices or locations. NASAA states that the Proposal is "improvident at best" and could lead to investor harm. PIABA similarly states that the Proposal runs counter to FINRA's objective of investor protection.

More specifically, PIABA contends that the existing supervisory structure of remote offices "commonly leads to rogue brokers' and advisors' poor conduct continuing unmolested for extended periods of time." PIABA adds that the Proposal would "provide additional opportunities for a broker to engage in fraudulent conduct without a supervisor or auditor adequately supervising the broker's conduct." Citing a number of cases involving misconduct that occurred as early as 1989, PIABA concludes that they demonstrate that "member firms have been and remain unable or unwilling to effectively supervise remote offices" and illustrate supervisory systems that were deficient.[9] However,

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5 See Cetera, CFN, HIC, LPL, MMLIS, Raymond James, Schwab, Smith.

6 See ASA, Dirico, HIC, Integrated Solutions, LPL, Schwab, SIFMA, Virtu, WFC.

7 See Canaccord, HIC, Schwab, WFC, Virtu.

8 See Proposal, 87 FR 47248, 47256.

9 See, e.g., Hailey v. Westpark Capital, Inc., FINRA Case No. 20-00320, 2021 FINRA ARB. LEXIS 652, *10 (May 25, 2021) (noting, among other things, that an

as further discussed below, FINRA disagrees with PIABA's overbroad conclusion that member firms generally are unable or unwilling to effectively supervise their associated persons in remote, dispersed offices.

Notwithstanding that Rule 3110(f)(2)(A) currently allows associated persons to work from non-branch locations that are residential locations,[10] NASAA expresses concerns about home work locations, asserting that unlike a traditional office space, a residential work location is not a controlled environment and has shortcomings in areas that include cybersecurity, records storage, and communications with customers outside of firm systems, and that any discussions pertaining to the custody of customer securities or funds in a home office should be viewed with skepticism. NASAA doubts that firms can effectively ensure the use of firm systems and, more generally, questions whether technological advancements cited by FINRA are being used by firms or can effectively control the activities of persons working remotely.

NASAA also contends that the Proposal would "alter the basic nature of firm supervision" and questions whether electronic monitoring has advanced enough to allow the industry to risk replacing supervision, including in-person inspections, with "unspecified technological alternatives." Further, NASAA states that the Proposal does not describe the technologies being employed to conduct effective remote surveillance, nor does it detail why technological advances support lengthening the inspection frequency of supervisory offices. NASAA states that supervisory functions are more critical where individuals are working from dispersed locations and more challenging because supervisors have less direct contact with their supervised persons.

While FINRA notes NASAA's and PIABA's concerns about the supervision of associated persons in the hybrid work environment and technology's role in facilitating effective supervision, the shift in workplace models to a more hybrid workforce and advancements in technology to enhance supervision have been taking place for many years. Home offices are permitted under current FINRA rules and have been effectively used by firms for decades.[11] FINRA believes that home offices can be effectively supervised under this Proposal, and the proposed limitations on which locations would qualify to be designated as an RSL provide important safeguards to allow the frequency of inspections potentially to be reduced only for lower risk locations.

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individual who was banned from the securities industry for participating in Ponzi scheme, was hired by the firm to conduct the on-site inspection of the home of an associated person).

10 See Rule 3110(f)(2)(A)(ii) and (iii).

11 See note 10, supra.

In this regard, FINRA re-emphasizes that the Proposal does not change the existing obligation for firms to reasonably supervise their associated persons on an ongoing basis under Rule 3110 generally. The Proposal impacts the periodicity of inspections under Rule 3110(c)—one component of a reasonably designed supervisory system—of specified residential locations, subject to important conditions. Those conditions confine RSL eligibility to a limited range of lower risk supervisory functions that associated persons engage from their private residences, subject to many of the same safeguards and conditions applied today to the residential non-branch locations under Rule 3110(f)(2)(A).[12]

FINRA believes that this combination of attributes, alongside the technology that is already used to supervise, monitor, and review the activities of associated persons who work from non-branch locations, merit classifying these RSLs as non-branch locations that would still be subject to a regular periodic inspection schedule. As stated in the Proposal and affirmed by several commenters, FINRA believes that the accessibility of digital technologies (e.g., video conferencing, cloud services, virtual private networks) have, in fact, provided effective new tools and methods by which a firm may meet its obligations to supervise the activities of each associated person, regardless of location, compensation or employment arrangement, or registration status, in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. The Proposal maintains the core principle of Rule 3110 for a member firm to have a reasonably designed supervisory system to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. As explained in prior guidance, the "reasonably designed" standard "recognizes that a supervisory system cannot guarantee firm-wide compliance with all laws and regulations. However, this standard does require that the system be a product of sound thinking and within the bounds of common sense, taking into consideration the factors that are unique to a member's business[.]"[13]

Breadth of RSL Activities

As proposed, an RSL would be an associated person's private residence at which specified supervisory functions occur, including those supervisory functions set forth in the

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12 SIFMA observes that the Proposal uses the term "private residence" whereas Rule 3110(f)(2) uses the term "primary residence." The Proposal's use of "private residence" is intentional to capture residential locations generally, but the term is confined to proposed Rule 3110.19. FINRA is not proposing to alter any aspect of Rule 3110(f)(2) through this Proposal and for that reason, the distinction will remain.

13 See Notice to Members 99-45 (June 1999) (providing guidance on supervisory responsibilities).

OSJ and branch office definitions.[14] Based on the electronic nature of the associated activities and supervision, several commenters recommend expanding the RSL designation to include additional activities, namely order execution and market making described in Rule 3110(f)(1)(A), and structuring of public offerings or private placements described in Rule 3110(f)(1)(B), along with investment banking and trading.[15] Virtu suggests that all personal residences should be treated as non-branch locations at which only electronic supervisory or other securities-related activities occur. Canaccord and Fidelity explain that these activities are conducted through electronic communication and order handling systems that are easily recorded and monitored. WFC states that these activities are effectively monitored and controlled through surveillance and compliance tools, and web-based communication platforms, which are the same risk-based tools and systems that supervisory personnel use at a traditional office and private residence. WFC believes that individuals who engage in these activities should also benefit from workplace flexibility. Canaccord believes that because of the electronic nature of these activities, there is no concern about paper-based records being retained or stored at a residence. Further, through these electronic systems, Canaccord says that firms are able to remotely restrict an individual's access to trading systems or, if a trading threshold or capital level is breached, supervisory personnel will be made aware immediately to then take remedial steps. Canaccord notes that teleconference technology has improved the ability for traders to interact with each other and their supervisors on a daily basis.

FINRA appreciates these comments but declines to expand the RSL definition to include the activities described above. The proposed RSL designation does not turn only on whether an activity occurs primarily through electronic means. Instead, the Proposal reflects a number of safeguards and conditions intended to narrowly target only lower risk supervisory activities occurring from a private residence and to align those conditions with those set forth under existing Rule 3110(f)(2)(A)(ii). Longer term, FINRA expects to reassess the OSJ and branch office definitions under Rule 3110(f) more generally as part of its continued efforts to modernize FINRA rules.

Safeguards and Conditions

Many of the proposed safeguards and conditions for RSL designation are based on those used for the existing residential exclusions to the branch office definition. Among the 10 conditions to qualify as an RSL are the following: (1) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location (proposed Rule 3110.19(a)(1)); (2) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3110 (proposed Rule 3110.19(a)(7)); (3) the

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14 See Rule 3110(f)(1)(D) through (G), and Rule 3110(f)(2)(B).

15 See Canaccord, Fidelity, Virtu, WFC.

member maintains a list of the residence locations (proposed Rule 3110.19(a)(9)); and (4) all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location (proposed Rule 3110.19(a)(10)).

While PIABA generally questions the proposed safeguards and conditions, several other commenters seek to revise these proposed safeguards and conditions that must be met for a location to be designated as an RSL. Those proposed revisions are addressed below.

- *Immediate Family (Proposed Rule 3110.19(a)(1))*

Several commenters assert that the term "immediate family" is restrictive because it does not take into account more contemporary types of living arrangements (e.g., roommates, domestic partnerships), and urge FINRA to consider modernizing the concept to accommodate other living arrangements.[16] SIFMA states that two supervisors who reside together pose no greater risk than two supervisors of the same immediate family. Cambridge suggests removing proposed Rule 3110.19(a)(1) because it is unnecessary, noting that firms have an ongoing responsibility to supervise their associated persons. FINRA notes that the language used in proposed Rule 3110.19(a)(1) is identical to existing rule text used in the primary residence exclusion under Rule 3110(f)(2)(A)(ii)a. to align with the condition applied to the current residential exclusions to the branch office definition. For that reason, FINRA declines to remove the proposed condition as Cambridge suggests.

FINRA appreciates these comments. While the term "immediate family" is not defined under Rule 3110(f)(2), it is defined in other FINRA rules, and FINRA will consider providing additional clarity.[17]

- *Correspondence and Communications (Proposed Rule 3110.19(a)(7))*

NASAA asserts that the reference to "the public" is unclear and suggests changing the proposed language to read that "all correspondence and communications by the associated person related in any way to existing or potential business activities are subject

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16 See CAI, Cambridge, CFN, FSI, SIFMA.

17 See, e.g., paragraph (c) under FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer), defining "immediate family" to mean "parents, grandparents, mother-in-law or father-in-law, spouse or domestic partner, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person who resides in the same household as the registered person and the registered person financially supports, directly or indirectly, to a material extent. The term includes step and adoptive relationships."

to the firm's supervision in accordance with [Rule 3110]." NASAA believes that the correspondence and communications that are subject to firm supervision would be "better defined by subject, not recipient."

FINRA notes that the proposed language aligns with existing rule text used in the primary residence exclusion under Rule 3110(f)(2)(A)(ii)e. and aligns with the terminology in FINRA Rule 2210 (Communications with the Public). To preserve efforts to maintain parity between the proposed safeguards and conditions, and those appearing under Rule 3110(f)(2)(A)(ii), FINRA declines to adjust the language in proposed condition. To adjust the language in the manner NASAA recommends would create an incongruity within Rule 3110 and raise questions about the difference in meanings.

- *List of Residence Locations (Proposed Rule 3110.19(a)(9))*

MMLIS suggests the creation of a more formal categorization or appropriate system change so firms can identify and track RSLs on the Central Registration Depository ("CRD®").[18] FINRA appreciates this recommendation, but at this time, FINRA believes the documentation requirements for the Proposal suffices and is consistent with similar requirements under Rule 3110(f)(2)(A)(ii)i.

- *Books and Records (Proposed Rule 3110.19(a)(10))*

NASAA expresses concern with the phrase "other than at the location," contending that the phrase could leave an RSL free to maintain records "outside of the firm's central control." To address this concern, NASAA recommends adjusting the language in proposed Rule 3110.19(a)(10) to state that all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules "are created on the member's electronic system and are maintained on the member's electronic or other central recordkeeping system." NASAA believes that requiring documents to be created on firm systems would address instances where state regulators have found forged and pre-signed physical documents.

The alternative prescriptive standard NASAA suggests would impose a new obligation on firms to create and maintain records in electronic form, which may not align

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[18] CRD is the central licensing and registration system that FINRA operates for the benefit of FINRA, the SEC, other self-regulatory organizations ("SROs"), state securities regulators and broker-dealer firms. The information maintained in the CRD system is reported by registered broker-dealer firms, associated persons and regulatory authorities in response to questions on specified uniform registration forms. See generally Rule 8312 (FINRA BrokerCheck Disclosure).

with firms' obligations generally under the SEC's Books and Records Rules.[19] Among other things, the SEC's Books and Records Rules allow broker-dealers to preserve records in other forms, such as in paper form (i.e., firms are not required to preserve records solely in electronic form).[20] Thus, FINRA declines to adjust the language in the manner NASAA recommends. Moreover, FINRA believes that proposed Rule 3110.19(a)(10), in combination with the other safeguards and conditions, appropriately lowers the overall risk profile of an RSL by precluding a firm from maintaining any books or records required to be made and preserved by the member under the federal securities laws or FINRA rules at an RSL (emphasis added).

Ineligibility Criteria

In addition to the proposed safeguards and conditions, the Proposal would set forth nine categories that would preclude a private residence from being designated as an RSL. These categories include, among others, an associated person's qualifications, level of supervisory experience with the member firm, and an associated person's record of specified regulatory or disciplinary events.

General Comments

Several commenters question the necessity of prescriptive ineligibility criteria and recommend ways to promote greater flexibility in assessing eligibility. For example, Schwab and SIFMA suggest that the Proposal treat "ineligible locations" as a general presumption of ineligibility which would then require a firm to document deviations from the presumption in a member's written supervisory and inspection procedures, including the factors considered in such determinations. WFC contends that the criteria are duplicative of Rule 3110.12, which describes the factors a firm must consider in establishing and maintaining supervisory procedures. Raymond James suggests that the Proposal instead allow firms to establish and document their own ineligibility criteria in their written supervisory procedures and base them on the individual firm's technological

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19 See SEA Rules 17a-3 and 17a-4.

20 See generally Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants, Securities Exchange Act Release No. 96034 (October 12, 2022) (referring to records stored in paper form or on micrographic media). FINRA also notes that where an office is a private residence, SEA Rule 17a-4(l) provides, in part, that a broker-dealer need not maintain records at the private residence, but the records must be maintained at some other location within the same State as that office as the broker-dealer chooses, or to produce those records promptly at the request of a representative of a securities regulatory authority at the office to which they relate or at an agreed upon location.

capabilities and business models. Below is an overview of commenters' views on the ineligibility criteria.

- *One-Year Supervisory Experience with the Member (Proposed Rule 3110.19(b)(4)); Functioning as Principal for Limited Period (Proposed Rule 3110.19(b)(5))*

Proposed Rule 3110.19(b)(4) would provide that a location would be ineligible as an RSL where one or more associated persons at such location designated as a supervisor has less than one year of direct supervisory experience with the member. Several commenters express concerns about this proposed provision.[21] Among other things, they state that it is arbitrary, broad, or does not provide additional investor protection, and would adversely impact hiring efforts and impose administrative burdens.

Several commenters contend that the proposed criterion is too broad because it would not only apply to a newly designated supervisor with no prior supervisory experience in the industry, but also: a lateral hire with decades of prior supervisory experience at similar-sized firms; an employee of the member firm who is promoted as a designated supervisor; a designated supervisor at a firm that conducts most of its business in-person; and a designated supervisor at a firm in which nearly all personnel work full time from home under off-site supervision.[22]

NASAA states that while the RSL Proposal recognizes that inexperienced supervisors should not be able to operate from residential locations, "it does not make the case that more experienced supervisors are generally adept enough at remote surveillance technologies to supervise effectively. . . [i]f a supervisor cannot use technology to identify red flags effectively, then the whole paradigm that industry is promoting will fail." Several firms believe the proposed criterion discounts the significant training and oversight of supervisory employees and is unlikely to produce an increase in investor protection in light of an individual who may have years of supervisory experience from another member firm.[23] Several other firms suggest removing the one-year criterion and allowing firms discretion to consider experience as part of the risk factors a firm should consider when they make determinations to designate a location as an RSL.[24]

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21 See CAI, Cambridge, Canaccord, Cetera, CFN, Fidelity, FSI, Group of 16, MMLIS, NASAA, Raymond James, Schwab, SIFMA, WFC.

22 See Cambridge, SIFMA, WFC.

23 See Cetera and CFN.

24 See Fidelity and FSI.

Several commenters further state that the proposed restriction will negatively impact talent recruitment and retention by placing firms at a competitive disadvantage with non-FINRA member financial firms for recruiting and retaining talent, preventing firms from recruiting qualified individuals for supervisory roles, discouraging qualified individuals from taking on supervisory responsibilities if they are limited by the locations from which they may work, and disincentivizing individuals from taking on supervisory roles or even joining the industry.[25]

Some commenters highlight the administrative burden that would accompany proposed Rule 3110.19(b)(4).[26] These commenters explain that a firm would be required to register a location as an OSJ for a year, knowing that the firm will unregister the location after one year. Fidelity states that the one-year clock would have to restart every time a supervisor, regardless of tenure with the firm or familiarity with supervisory expectations and systems, changes broker-dealer registration.

Some commenters offer alternatives to proposed Rule 3110.19(b)(4).[27] For example, Fidelity suggests allowing firms to complete a risk assessment and then permitting non-producing supervisors in their first year of association with an affiliated broker-dealer to take advantage of RSL if the firm determines that the supervisory objectives of Rule 3110 can be accomplished without registering the home as an OSJ. FSI recommends removing the one-year timeframe and giving firms the discretion to consider new hires or promoted supervisors among the risk factors in planning their inspections. Rather than registering a new supervisor's private residence as an OSJ in the first year, Group of 16 suggests instead that such location undergo an inspection within the first year of RSL designation.

Similarly, proposed Rule 3110.19(b)(5) would provide that a location would be ineligible as an RSL where one or more associated persons at the location is functioning as a principal for a limited period pursuant to Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period).[28] Cambridge notes that Rule 1210.04 provides a way for firms to attract and retain talent while the associated person waits to pass the appropriate qualification examination. If a firm has the controls to appropriately supervise an associated person acting as a principal for a limited time, Cambridge questions why that associated person's residence would be ineligible to be

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25 See MMLIS, Raymond James, Schwab and SIFMA.

26 See CAI, CFN, Fidelity, FSI.

27 See Fidelity, FSI, Group of 16, Schwab.

28 In general, that rule permits a registered person who is designated by such person's firm to function in a principal capacity for a fixed 120-day period before having passed an appropriate principal qualification examination.

designated as an RSL. Cambridge recommends removing proposed Rule 3110.19(b)(5) as unnecessary.

FINRA appreciates these comments to proposed Rules 3110.19(b)(4) and 3110.19(b)(5), but declines to either remove or alter these proposed criteria. FINRA believes that where an associated person lacks experience as a supervisor with a particular member or where a registered person has not yet passed the appropriate principal qualification examination, those locations should remain on an annual inspection cycle. With respect to the former, while such associated persons may have prior supervisory experience at other firms, a new supervisor at a firm may need time to become knowledgeable about the firm's systems, people, products, and overall compliance culture.

- *Associated Person's Record of Specified Regulatory or Disciplinary Events (Proposed Rule 3110.19(b)(9))*

Proposed Rule 3110.19(b)(9) would provide that a location would be ineligible as an RSL where one or more associated persons at such location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, an SRO, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board. NASAA highlights that state regulators investigate and bring actions for violations of state securities laws, and proposed Rule 3110.19(b)(9) should reflect that within its scope. To account for state regulators, NASAA recommends including a reference to "any state law pertaining to the regulation of securities" within the list of provisions.

FINRA declines to broaden the scope of proposed Rule 3110.19(b)(9) in the manner NASAA suggests because the list of provisions is derived from Form U4 (Uniform Application for Securities Industry Registration or Transfer), which contains no such language.[29] The provisions were added to Form U4 in 2009 as part of several amendments to the uniform form for which NASAA had expressed its support.[30] To adjust the language

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[29] See, e.g., Form U4, Question 14E(5)–(7) (referencing the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, and the rules of the Municipal Securities Rulemaking Board).

[30] See Securities Exchange Act Release No. 59916 (May 13, 2009), 74 FR 23750 (May 20, 2009) (Order Approving File No. SR-FINRA-2009-008) (noting, among

as NASAA recommends would create regulatory inconsistency and raise the difficulty of administering and supervising this element.

Other Comments

NASAA raises concerns with the "rushed manner" in which the Proposal has been presented and contends that by not going through its regulatory notice process, FINRA has "precluded the ability of all stakeholders to engage in reasoned and thoughtful consideration of the [Proposal]." FINRA disagrees with this assertion. Since the onset of the pandemic, FINRA has been fully engaged with a host of stakeholders about pandemic-related regulatory and operational issues.[31] As part of that ongoing engagement and in response to the pandemic, FINRA adopted several temporary amendments to Rule 3110, including Rule 3110.17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020 and 2021, and Through December 31 of Calendar Year 2022).[32] As described in the Proposal, the changes brought forth by the pandemic merit a reevaluation of the regulatory benefit of requiring firms to designate a private residence where lower risk activities are conducted as an OSJ or branch office.[33]

Several commenters share views in areas that are outside the scope of the Proposal.[34] These areas include privacy concerns associated with displaying the street address of residential locations on FINRA's BrokerCheck® tool,[35] and a potential reevaluation of the definitions of OSJ and branch office under Rule 3110(f),[36] and the

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other things, that these provisions enable FINRA and other self-regulatory organizations and state regulators to readily identify persons subject to statutory disqualification as a result of willful violations).

31 See, e.g., Regulatory Notices 21-44 (December 2021) 20-42 (December 2020) (FINRA Seeks Comment on Lessons From the COVID-19 Pandemic); 20-16 (May 2020); and 20-08 (March 2020) ("Notice 20-08").

32 See Proposal, 87 FR 47248, 47249 n.5.

33 See Proposal, 87 FR 47248, 47249.

34 See ASA, Canaccord, CFN, Fidelity, FSI, HIC, Integrated Solutions, LPL, MMLIS, NASAA, PIABA, Raymond James, Schwab, SIFMA, Virtu, WFC.

35 See BrokerCheck, http://www.brokercheck.finra.org.

36 For example, with respect to branch office registration requirements, Fidelity conveys its support for a retrospective rule review, and Canaccord requests clarification that Rule 3110(f)(1)(B) is intended to require registration for capital raising activities, and not merger and acquisition advisory activities. Canaccord also appears to seek relief in principal registration requirements for traders who

inspection requirement under Rule 3110(c).[37] These commenters also take the opportunity to respond to the Pilot Proposal. While FINRA appreciates the comments raised in these areas, FINRA will consider these comments as part of future rulemaking or as part of the Pilot Proposal, as appropriate. In addition, as FINRA gains experience under the Proposal and as firms' business practices develop, FINRA will review the requirements to ensure that they continue to meet their regulatory objectives.

SEC Action

Several commenters urge the SEC to adopt this Proposal and the Pilot Proposal concurrently,[38] with some encouraging the SEC to adopt both proposals to coincide with the upcoming expiration of Rule 3110.17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020 and 2021, and Through December 31 of Calendar Year 2022) on December 31, 2022.[39] Should the SEC need additional time to consider the proposals, some commenters suggest extending Rule 3110.17 until both proposals become effective.[40] Raymond James requests that the relief provided in Notice 20-08 remain in effect until the SEC reaches a decision on the Proposal.

On the other hand, NASAA suggests the SEC disapprove the Proposal and the Pilot Proposal, and instead extend Rule 3110.17 for one year so that FINRA may: "(1) conduct an examination sweep (under the SEC's supervision) to determine the ubiquity and effectiveness of remote supervision policies, procedures, practices and technologies across

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may work from a residential location. To the extent a particular scenario raises questions regarding the application of Rule 3110(f) and attendant registration requirements of associated persons, FINRA expects to address such issues with members through its interpretative process on a case-by-case basis or through future rulemaking, as appropriate.

37 For example, some commenters believe that certain factors or attributes of an office or location should drive the inspection requirement such as whether, among other things, an office or location is held out to the public; accepts or holds customer securities or funds; maintains physical records; is a location at which permissively registered persons work (e.g., clerical staff or personnel working in compliance, legal, human resources). These commenters believe that the presence of such attributes negate the need for an office or location to undergo an inspection because they do not present a material risk of misconduct or investor harm.

38 See ASA, Cetera, CFN, Fidelity, Group of 16, MMLIS, Raymond James, Schwab, SIFMA.

39 See Group of 16, MMLIS, Schwab, SIFMA.

40 See Fidelity, MMLIS, SIFMA.

a wide sample of FINRA member firms; (2) issue a public report that describes FINRA's methods, findings and any recommendations for changes and improvements that could ensure effective remote supervision generally; and (3) based on the record developed, engage in full rulemaking processes for any subsequent proposals, which would include FINRA regulatory notice and comment periods followed by SEC notice and comment periods."

FINRA appreciates the need for regulatory clarity and has submitted a rule filing with the SEC to amend Rule 3110.17 to extend the temporary relief to conduct remote inspections through the earlier of the effective date of the Pilot Proposal, if approved, or December 31, 2023.[41]

* * * * *

FINRA believes that the foregoing responds to the material issues raised by the commenters to the rule filing and has determined not to amend the Proposal in response to comments. If you have any questions, please contact me at [redacted], email: [redacted].

Best regards,

/s/ Kosha Dalal

Kosha Dalal
Vice President and Associate General Counsel
Office of General Counsel

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41 See File No. SR-FINRA-2022-030, https://www.finra.org/rules-guidance/rule-filings/sr-finra-2022-030.

Attachment A: Alphabetical List of Commenters to File No. SR-FINRA-2022-019

1. Barbara Armeli, Managing Director, Chief Compliance Officer, Charles Schwab & Co., Inc. & Lynn Konop, Managing Director, Chief Compliance Officer, TD Ameritrade, Inc. (together, "Schwab") (August 23, 2022);

2. Eric Arnold & Clifford Kirsch, Eversheds Sutherland (US) LLP for the Committee of Annuity Insurers ("CAI") (August 23, 2022);

3. Suzy Auletta, SVP and Chief Compliance Officer, Raymond James Financial Services, Inc., & Shawn Barko, SVP, Chief Compliance Officer, Raymond James & Associates, Inc. ("Raymond James") (August 23, 2022);

4. Casey Bell, Johanna Mears, & Serina Shores, Compliance Team, Huntington Investment Company ("HIC") (September 2, 2022);

5. David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute ("FSI") (August 23, 2022);

6. Jennifer A. Brunner, Chief Compliance Officer, Nanette K. Chern, Chief Compliance Officer, Susan L. La Fond, Chief Compliance Officer, & Susan K. Moscaritolo, Chief Compliance Officer, ACA Foreside ("ACA Foreside") (August 22, 2022);

7. Bernard V. Canepa, Managing Director and Associate General Counsel & Kevin Zambrowicz, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") (August 23, 2022);

8. Bernard V. Canepa, Managing Director and Associate General Counsel & Kevin Zambrowicz, Managing Director and Associate General Counsel, SIFMA (October 19, 2022);

9. Peggy E. Chait, Managing Director & Howard Spindel, Senior Managing Director, Integrated Solutions ("Integrated Solutions") (August 19, 2022);

10. Justin Dirico, Principal and Head of Futures, OTC Direct Futures LLC ("Dirico") (August 9, 2022);

11. Michael S. Edmiston, Public Investors Advocate Bar Association ("PIABA") (August 23, 2022);

12. Christopher A. Iacovella, Chief Executive Officer, American Securities Association ("ASA") (September 6, 2022);

13. Melanie Senter Lubin, NASAA President and Maryland Securities Commissioner, North American Securities Administrators Association, Inc. ("NASAA") (August 23, 2022);

14. Gavin Lucca, Manager, Branch Audit, Commonwealth Financial Network ("CFN") (August 23, 2022);

15. Jim McHale, Executive Vice President, Head of WIM Compliance & Robert Mulligan, Executive Vice President, Global Head of CIB Compliance, Wells Fargo & Company ("WFC") (August 23, 2022);

16. Gail Merken, Chief Compliance Officer, Fidelity Brokerage Services LLC, Janet Dyer, Chief Compliance Officer, National Financial Services LLC, & John McGinty, Chief Compliance Officer, Fidelity Distributor Company LLC (together, "Fidelity") (August 23, 2022);

17. Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. ("Virtu") (August 23, 2022);

18. Seth A. Miller, General Counsel, Chief Risk Officer, Cambridge Investment Research, Inc. ("Cambridge") (August 23, 2022);

19. Mark Quinn, Director of Regulatory Affairs, Cetera Financial Group ("Cetera") (August 23, 2022);

20. Tamara K. Salmon, Associate General Counsel, Investment Company Institute ("ICI") (July 29, 2022);

21. Mark Seffinger, Chief Compliance Officer, LPL Financial ("LPL") (August 23, 2022);

22. Mark Seffinger, Chief Compliance Officer, LPL (October 25, 2022);

23. Karol Sierra-Yanez, Lead Counsel, Broker-Dealer and Investor Advisor Practice Group, MML Investors Services, LLC ("MMLIS") (August 23, 2022);

24. Harmony Smith, Financial Advisor ("Smith") (August 8, 2022);

25. Jennifer L. Szaro, Chief Compliance Officer, XML Securities, LLC, et al. ("Group of 16") (October 25, 2022); and

26. Andrew F. Viles, Chief Legal Officer, Canaccord Genuity LLC ("Canaccord") (August 25, 2022).